IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3743 of 2002
WITH
SPECIAL CIVIL APPLICATION No 3909 of 2002
WITH
SPECIAL CIVIL APPLICATION No 3913 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

SURENDRANAGAR DISTRICT KHARID VECHAN SANGH

Appearance:
MR ASHISH M DAGLI for Petitioner No. 1
NOTICE SERVED BY DS for Respondent No. 1
MS PAURAMI B SHETH for Respondent No. 2-3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 11/07/2002

COMMON JUDGEMENT

1 On 19.6.2002 this Court issued Rule in Special

Civil Application Nos.3909/02 and 3913/02 and continued ad-interim relief granted earlier. Today the Special Civil Application No.3743 of 2002 is also listed for admission. Mr.Dagli, learned Advocate for the petitioner states that in Special Civil Application No.3743 of 2002 also a similar and identical issue is involved, hence, it may also be heard along with Special Civil Application Nos. 3909 of 2002 and 3913 of 2002.

Rule.

Mr.Sheth, learned Advocate appears and waives service of Rule. At the request of the learned Advocates of the respective parties these petitions are taken up for final hearing.

2 In all these petitions the petitioner is Gujarat State Road Transport Corporation and it has filed the present petition against respondent no.1, Surendranagar District Kharid Vechan Sangh, Surendranagar (Sangh) and respondent nos. 2 and 3 who are the original claimants in various claim petitions filed before Motor Accident Claims Tribunal (Aux), Surendranagar.

3 It appears that on account of an accident which took place at around 9.50 a.m. on 15/7/1989 between a bus belonging to the petitioner corporation and a tractor attached with trolly belonging to respondent no.1, nine claim petitions came to be filed. The said claim petitions came to be decided and contributory negligence was fixed by the Tribunal at 20% for GSRTC - the petitioner and 80% for respondent No.1 - Sangh. Accordingly the award was made directing the petitioner and respondent no.1 to be liable in terms of the award with 12% interest. According to the petitioner corporation, it had deposited 20% of its own liability in the execution proceedings but on failure of respondent no.1 - Sangh to deposit 80%, which it was required to deposit, the original claimants obtained an order for attachment of the properties of the petitioner Corporation. The case of the petitioner corporation is that attachment was sought in connivance with respondent no.1 - Sangh and though the petitioner corporation is not liable in relation to 80% of the awarded amount the notice for attachment was served on the petitioner Corporation. It is further averred on behalf of the petitioner that respondent No.1-Sangh is likely to dispose off its movable and immovable properties which would saddle the petitioner with liability which has been determined to be the liability of respondent no.1 Sangh. It is in the aforesaid backdrop of facts and circumstances that the petitioner has approached this

Court seeking the following reliefs :

"(B) Allow the Special Civil Application by issuing a writ of prohibition or any other appropriate writ, order or direction against the respondent Sangh, prohibiting it from disposing of its moveable or immoveable properties in any manner;

(C) Allow this Special Civil Application by directing the respondent Sangh to deposit the 80% of the awarded amount as held by the Tribunal in Motor Accident Claim Petition No.88, 40, 85, 87, 89,, 193, 194 and 273 of 1990 and further be pleased to hold that the liability of the Corporation is 20% only, as held by the Tribunal".

4 On 4/4/2002 a notice was issued but despite service there was no appearance on behalf of respondent No.1 - Sangh. Thereafter, on 26/4/2002, the Court directed Chairman of respondent no.1 - Sangh to remain personally present. Thereafter, fresh notice came to be issued on 8/5/2002. Despite direct service till date there is no appearance on behalf of respondent No.1Sangh. This conduct goes to show that the apprehension expressed by the petitioner is not unfounded.

5 Attention of the Court has been invited to the balancesheet and profit and loss account as on 31/3/2001 of the Sangh, which have been placed on record to show that respondent no.1 - Sangh is a going concern which is earning profits and is financially sound to discharge the liabilities fastened on it by the Tribunal. In light of the fact that respondent no.1 has been duly served and has chosen not to represent itself as well as taking into consideration the facts which have come on record these petitions are required to be allowed.

6 While issuing notice on 4/4/202, this Court had directed stay of further proceedings in execution application no.63 of 2001 and also directed respondent no.1 - Sangh to maintain status-quo and not to transfer or alienate their property during the pendency of the petition. During the course of hearing it was also pointed out on behalf of the petitioner that the petitioner is to make an application to the execution court to join respondent no.1 - Sangh as party in the pending Darkhast proceedings which shall be filed within a day or two. In so far as prayer clause 15(C) is concerned, the petitioner has already deposited 80% of the awarded amount which is otherwise held to be the liability of respondent no.1 - Sangh. by the Tribunal in

7. The respondent Sangh is hereby prohibited from disposing of its immovable and movable properties in any manner whatsoever till it satisfies the execution court that it will discharge the liability fastened on it by the Tribunal in MACP Nos.88, 40, 85, 87, 89, 193, 194 and 274 of 1990. The respondent No.1-Sangh is also directed to deposit 80% of the awarded amount which is held by the Tribunal to be payable by the said Sangh in aforesaid claim petitions.

8. The petitions stand allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

(D.A.Mehta, J)

m.m.bhatt